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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,408	04/23/2007	Brendan Ruff	RUF-1	9641

7590 07/30/2009

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EXAMINER	
PO, MING CHEUNG	
ART UNIT	PAPER NUMBER
1797	

MAIL DATE	DELIVERY MODE
07/30/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/587,408	RUFF, BRENDAN	
	Examiner	Art Unit	
	MING CHEUNG PO	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 April 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5-13,15,17,18,21-23 and 25-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5-13,15,17,18,21-23 and 25-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Office Action Summary

1. This is the initial office action in response to application filed on 04/23/2007.

2. Claims 1-3, 5-13, 15, 17-18, 21-23, 25-31 are pending and have been fully considered.

Information Disclosure Statement

3. The information disclosure statement filed 7/27/2006 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-3, 5-13, 15, 17-18, 21-23, 25-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over MOORE (U.S. 4,427,366) in view of WILSON (U.S. 4,614,625).

Regarding claims 1, 2, 9, 13, 15, 17, and 18, MOORE teaches a scented candle with odorizing chips that may be placed around the candle. The chips comprise of a mixture of candle **wax** or paraffin material **(bulk material)** and at least one **scent**

producing material. The scent is released when the odorizing chips are heated.

MOORE does not seem to explicitly state a coating.

However, WILSON teaches in lines 34-46 of column 1, coating wax particles with a coloring agent by adding the **coloring agent (colourant)** to **small uniform pieces of hardened wax** and then compression molded.

It would be obvious to one of ordinary skill in the art to use the small uniform pieces of hardened wax as a coating **(coating)** for the odorizing chips that MOORE teaches with the coloring agent that WILSON teaches.

The motivation to do so can be found in lines 34-46 of column 1 of WILSON; for aesthetics.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Regarding claims 3, and 5-6, MOORE does not seem to explicitly state the volume% of the scent.

However, it would be obvious to one of ordinary skill in the art to add a higher volume concentration of scent to the odorizing chips to produce a longer or more noticeable scent.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Regarding claims 7 and 8, MOORE does not seem to explicitly state what the scenting agents are.

However, there is no reason to believe that the scent can not be a perfume or a

fragrant oil. WILSON teaches in fig 3 that a scenting agent for a candle may be fragrance or perfume.

One of ordinary skill would use perfume or fragrant oil with a reasonable expectation of success.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Regarding claims 10-12, MOORE does not seem to explicitly state the wax and scent are combined to form a paste, foamed solid material, or a liquid scent core within a solid bulk material.

However, it appears that it would have been an obvious matter of design choice to change the consistency of the odorizing chips since applicant has not disclosed that the different consistencies of the bulk material and scent solves any state problem and it appears that the invention would work equally well with the bulk material and scent mixed to form a solid.

Regarding claims 21, MOORE teaches the shape of the odorizing chips in fig 3a and 3b **(any other suitable ergonomic shape)**.

Regarding claim 22, MOORE does not seem to explicitly state the pellet is shaped such that the wick of a candle can pass inside its outer bounding perimeter.

However, it appears that it would have been an obvious matter of design choice to shape the odorizing chip such that the wick of a candle can pass inside its outer bounding perimeter since applicant has not disclosed that it would solve any stated problem and it appears that the invention would work equally well with the pellet in

another shape

Regarding claims 23-24, MOORE does not seem to explicitly state the melting temperature of the wax in the odorizing chips.

However, MOORE does state that it is made of candle wax.

It is common knowledge that most candle waxes melt in the range of 40C to 90C and in the range of 55C to 90C.

In the alternative, it appears that it would have been an obvious matter of design choice to use waxes that has a melting temperature in the range of 55C to 90C since applicant has not disclosed that the melting temperature of the wax solves any state problem and it appears that the invention would work equally well with wax with any melting temperature.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Regarding claims 25-26, modified MOORE does not seem to explicitly state that the outer surface of the pellet is treated to reduce the porosity of the pellet or to increase the mechanical strength of the pellet.

However, the odorizing chips are modified with **small uniform pieces of hardened wax.**

It would be obvious to one of ordinary skill in the art that the outer surface of the pellet has been treated to reduced porosity and increased mechanical strength. It is common knowledge that hardened wax provides both of these modifications.

Therefore, the invention as a whole would have been *prima facie* obvious to one

of ordinary skill in the art at the time the invention was made,

Regarding claim 27, MOORE does not seem to explicitly state that the bulk material comprises other additives.

However, WILSON teaches in lines 60-68 of column 3 that certain liquid carrier may help scenting agents absorb into paraffin granules.

Regarding claim 28, MOORE does not seem to explicitly state additives to increase the hardness of the wax in the odorizing chips.

However, additives to increase the hardiness of the wax are well known in the art. One method is to mix a harder wax with the softer wax.

The motivation to do so can be found in lines 55-60 of column 1 in MOORE. MOORE teaches that the uptake of scent producing chemicals with candle wax causes a softening of the wax.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Regarding claims 29 and 30, MOORE teaches that the odorizing chips are placed around the candle and releases the aroma when the wick of the candle is lighted.

MOORE does not seem to explicitly state that the pellets were added to the melt pool around the wick of a lit candle.

However, by design of the process that MOORE teaches, the odorizing chips become placed in the melt pool as the candle starts to melt and eventually melts in the melt pool. The scent released form the convection currents is inherent due to the flame

of the candle.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MING CHEUNG PO whose telephone number is (571)270-5552. The examiner can normally be reached on 9:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571)272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ming Cheung Po
Patent Examiner

/Cephia D. Toomer/
Primary Examiner, Art Unit 1797